



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2000/27
29 March 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Agenda item 9

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in East Timor

Report of the High Commissioner for Human Rights

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Introduction

1. The Commission on Human Rights held its fourth special session at Geneva from 23 to 27 September 1999 and adopted, on 27 September 1999, resolution S-4/1 entitled "Situation of human rights in East Timor".
2. In that resolution, the Commission welcomed the exercise of the right to self-determination by the people of East Timor on 30 August 1999. The Commission also condemned the serious violations of human rights in East Timor which had taken place and affirmed the individual responsibility and accountability of those who committed or authorized violations of human rights.
3. The Commission, in that resolution, called upon the Secretary-General to establish an international commission of inquiry, with adequate representation of Asian experts, in order, in cooperation with the Indonesian National Commission on Human Rights and thematic rapporteurs, to gather and compile systematically information on possible violations of human rights and acts which might constitute breaches of international humanitarian law committed in East Timor since the announcement in January 1999 of the vote and to provide the Secretary-General with its conclusions with a view to enabling him to make recommendations on future actions, and to make the report of the international commission of inquiry available to the Security Council, the General Assembly and the Commission on Human Rights at its fifty-sixth session.
4. Also in that resolution, the Commission decided to request the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Representative of the Secretary-General on internally displaced persons, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences, and the Working Group on Enforced or Involuntary Disappearances to carry out missions to East Timor and report on their findings to the Commission at its fifty-sixth session and, on an interim basis, to the General Assembly at its fifty-fourth session.
5. The Commission requested the High Commissioner for Human Rights to facilitate the activities of the mechanisms of the Commission, to prepare a comprehensive programme of technical cooperation in the field of human rights, in cooperation with other United Nations activities, focusing on capacity-building and reconciliation with a view to a durable solution to the problems in East Timor and to keep the Commission informed of developments.
6. The present report is submitted by the High Commissioner pursuant to the Commission's request and provides information on developments since the adoption by the Commission of resolution S-4/1, in particular regarding human rights technical cooperation programmes, and on the implementation of the recommendations of the International Commission of Inquiry and the special rapporteurs.
7. In order to obtain the most recent information for this report, the High Commissioner wrote, on 24 February 2000, to the Permanent Representative of Indonesia to the United Nations

Office at Geneva and the Indonesian National Commission on Human Rights inviting them to provide, should they so wish, information and views relating to the issues raised in the Commission's resolution and to subsequent developments.

8. In addition, and because of the importance of giving the people of East Timor an opportunity to express their views on the issues involved in facing the aftermath of the serious violations of human rights in East Timor, the High Commissioner also wrote inviting the submission of information and views to the Special Representative of the Secretary-General for East Timor, the East Timor National Consultative Council, community leaders and non-governmental organizations in East Timor. Information and views have been received from the Indonesian National Human Rights Commission, the Special Representative of the Secretary-General for East Timor and non-governmental organizations and are reflected in this report.

I. OHCHR FACILITATION OF THE ACTIVITIES OF THE MECHANISMS OF THE COMMISSION ON HUMAN RIGHTS AND THE INTERNATIONAL COMMISSION OF INQUIRY ON EAST TIMOR

9. The Office of the High Commissioner provided assistance to the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women in connection with their joint mission to East Timor from 4 to 10 November 1999 (see A/54/660 and E/CN.4/2000/115). In addition, OHCHR supported the mission of the Representative of the Secretary-General on internally displaced persons to East Timor from 26 February to 1 March 2000 (see E/CN.4/2000/83/Add.3).

10. Following the adoption by the Commission of resolution S-4/1, the Secretary-General requested the High Commissioner for Human Rights to take steps to implement the resolution in connection with the establishment of the international commission of inquiry. On 15 October 1999, the High Commissioner announced the composition of the International Commission and provided support to the Commission in connection with its mission to East Timor and Indonesia (23 November-8 December 1999) and in the preparation of its report (A/54/726-S/2000/59), which was transmitted to the Secretary-General on 6 January 2000. The views of the Government of Indonesia on that report are contained in the annex to document A/54/727-S/2000/65. The President of the Security Council, by a letter dated 18 February 2000, transmitted to the Secretary-General the views of the members of the Security Council regarding the report of the International Commission (S/2000/137).

II. TECHNICAL COOPERATION IN HUMAN RIGHTS

11. Mindful of the request of the Commission and pursuant to the memorandum of understanding signed between OHCHR and the Department of Peacekeeping Operations, OHCHR is developing with the Human Rights Office of the United Nations Transitional Administration in East Timor (UNTAET) technical cooperation programmes focusing particularly on capacity-building and reconciliation and on ensuring the administration of justice and dealing with the challenge of impunity. The UNTAET Human Rights Office in Dili has responsibility for the promotion of human rights in East Timor under the UNTAET mandate.

12. At the request of the Special Representative of the Secretary-General, OHCHR is working with the UNTAET Human Rights Office to provide experts on truth commissions from three different countries to meet with various groups in East Timor to discuss the diverse forms truth commissions can take and examine how they function within the overall context of justice and responsibility. The strengths and weaknesses of the different arrangements would also be examined.

13. A number of ongoing programmes are being organized by the UNTAET Human Rights Office to assist in strengthening the capacity of East Timorese human rights organizations and associations:

(a) Key documents on human rights have been and are being translated into Tetun, including the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Standard Minimum Rules for the Treatment of Prisoners. Indonesian versions of other instruments have been copied and widely distributed in Dili and other regions;

(b) UNTAET radio has set aside time for a regular programme on human rights;

(c) The UNTAET Human Rights Office organizes weekly meetings with local and international NGOs which are designed to generate discussion on topics of particular immediacy. Some of the topics discussed include the implications of the reports of the Indonesian Commission of Inquiry into Violations of Human Rights in East Timor and the International Commission of Inquiry, powers of arrest and detention, reconciliation and justice, and human rights violations against returnees. One forthcoming programme will focus on police procedures in cases of rape;

(d) UNTAET is helping build a law library for use by the newly established East Timorese Jurists Association;

(e) The UNTAET Human Rights Office, with input from international NGOs, has developed a series of forms for systematic collection of information, including for preparing incident reports and taking witness statements;

(f) UNTAET has installed software for a human rights database on computers of five leading NGOs in Dili; a consultant is returning in March to provide further training on systematic electronic collection of information;

(g) East Timorese NGOs have taken part with forensic experts in exhumations of victims of human rights violations in East Timor;

(h) An UNTAET human rights officer has been recruited specifically for NGO liaison and training and is helping coordinate a wide range of training programmes on everything from trauma counselling to financial management.

14. The UNTAET Human Rights Office is seeking human rights technical assistance in order to respond to the following urgent needs:

(a) Investigating sexual violence. Local NGOs, the judges and prosecutors and UNTAET's human rights investigation unit need assistance in investigating sexual crimes, protecting witnesses and treating victims. The assistance would include the provision of an expert in this field for a two- to three-month period and funds for the translation and publication of materials;

(b) Establishment of a centre for the rehabilitation of torture victims. Because the phenomenon of torture was eclipsed by other abuses during the January-September 1999 violence, the long-term effects of torture from earlier periods have been all but forgotten. Assistance would include the advice of professionals from existing centres on setting up a centre in East Timor;

(c) Alternative mechanisms for handling less serious crimes. A large number of less serious crimes could eventually clog the court system and prevent speedy disposition of the more serious offences. Attention has been drawn to a "diversion judicial system" operating in New Zealand that covers theft, minor assaults and some other offences considered on a case-by-case basis. Assistance would take the form of the provision of expert advice on the ideas and experiences from other countries on this subject.

(d) Human rights training programmes for the civilian police CIVPOL, East Timor's new police and the judiciary. Technical assistance in designing and implementing such programmes is required;

(e) Monitoring. The conformity of UNTAET regulations and the applicable law in East Timor with international human rights standards must be monitored. Assistance would include expert advice and training;

(f) Establishment of an ombudsman's office. UNTAET is studying the establishment of an ombudsman's office and will require technical assistance to assess proposals and means of implementation;

(g) Translations. International human rights standards need to be translated into local languages. Additional financial assistance is needed to enable the principal documents not yet translated to be made available to the population;

(h) Publications. United Nations books on human rights are urgently needed by the UNTAET Human Rights Unit, other UNTAET departments, CIVPOL, the judiciary and NGOs;

(i) Human Rights Library. The UNTAET Human Rights Office is planning to establish a library that would be accessible to NGOs. The library will need to contain material in at least English, Indonesian and Portuguese. Assistance with provision of relevant materials including subscriptions to relevant journals is needed.

15. OHCHR plans a mission to East Timor in mid-April 2000 to discuss with the UNTAET Human Rights Office to what extent and in what manner OHCHR can respond to the above-listed needs and to develop joint technical cooperation programmes for that purpose.

III. DEVELOPMENTS RELATING TO THE INDIVIDUAL ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS AND BRINGING THOSE RESPONSIBLE TO JUSTICE

16. The Chair of the Indonesian National Commission on Human Rights informed the High Commissioner that the National Commission's investigation report on East Timor was submitted to the Attorney-General on 31 January 2000.

17. The Secretary-General during his visit to Indonesia met, on 16 February 2000, with the Attorney-General of Indonesia and the National Commission on Human Rights and during those meetings a number of requests were made to the United Nations for technical cooperation assistance in connection with Indonesian national efforts to establish accountability for violations of human rights in East Timor and to strengthen national protection of human rights. The Secretary-General requested the High Commissioner, together with the United Nations Development Programme (UNDP), to respond to those requests. The High Commissioner is in contact with the Indonesian authorities on these issues.

18. The Special Representative of the Secretary-General for East Timor and the UNTAET Human Rights Office have provided the information contained in the following paragraphs.

Investigations

19. Investigations into killings and rapes that occurred between January and October 1999 are continuing. In March, UNTAET created a single coordinating agency for investigating human rights violations designed to pool the resources of CIVPOL and the UNTAET Human Rights Office, ensure that the CIVPOL investigators can concentrate on investigating the 1999 violence, and ensure that all investigators have the authorization to conduct investigations under criminal procedures currently operative in East Timor.

20. The deaths of 627 people, almost all of whom died between April and late September 1999, are currently being investigated. More than 35 suspects are in the Dili detention centre on suspicion of having taken part in killings in the lead-up to or immediate aftermath of the popular consultation in August. Some of these are high-profile cases, such as the killing of two nuns and seven others between Baucau and Lospalos on 25 September, or the attack on a church compound in Liquica on 6 April. The number of prosecutable cases is likely to rise sharply as people linked to the militias return home from West Timor. In Liquica alone, more than 250 members of the Besi Merah Putih militia have returned, some of them with valuable information about where bodies are buried and who was responsible for the crimes.

21. As of late February, 2 rape cases were under investigation of the more than 80 believed to have occurred during this period. UNTAET is giving high priority to the recruitment of experienced sexual assault investigators and has created a special unit within CIVPOL to address both past and current cases. UNTAET district human rights officers have been instructed to give particular attention to this issue as well, and they are working with local NGOs to ensure that the obstacles to rape investigations thus far are quickly overcome and that the perpetrators are identified and brought to justice.

22. Investigations have encountered a number of difficulties, among them a lack of transport and communications facilities, turnover in investigating staff, unavailability of witnesses, lack of investigators skilled in handling cases of sexual violence, and lack of prison facilities. There is also a backlog of cases: more than 200 cases are awaiting review by the newly appointed jurists.

Court system

23. The National Consultative Council (NCC) recently adopted a regulation on the organization of the East Timorese court system, which includes a provision for a special panel to try crimes against humanity. International judges will serve together with East Timorese judges on this panel.

Forensic work

24. The UNTAET Human Rights Office has focused its efforts on getting a forensic lab and mortuary in place so that full forensic examinations can be carried out on victims of the January-October 1999 killings. With the help of the New South Wales Institute of Forensic Medicine, a new mortuary has been established and fully equipped. A team of two pathologists, a forensic anthropologist and a forensic assistant has been working not only to exhume bodies for examination but also to set standard operating procedures for gathering evidence and to train the new judges, prosecutors and defenders in the protection and analysis of forensic evidence. As of early March, more than 160 bodies had been exhumed. The immediate priority is to gather forensic evidence that can be used in the cases of suspects currently in detention so that those cases can be quickly brought to trial; UNTAET has also developed a list of priority cases where either the importance of the case to establishing a pattern of abuse or the deterioration of the evidence makes exhumation and examination particularly important.

Justice and accountability

25. UNTAET reports that the demand for justice and accountability in East Timor remains high. There are several different options for justice which are being pursued in parallel. One is a judicial panel set up within the Dili court system specifically empowered to try crimes of universal jurisdiction, including crimes against humanity. Another is an Indonesian court that will have jurisdiction over those accused of crimes against humanity who are currently on Indonesian soil. This would include the Indonesian army officers, civilian officials and militia leaders named in the report of the Indonesian Commission of Inquiry into Violations of Human Rights in East Timor.

26. A memorandum of understanding on legal exchange has been signed between UNTAET and the Government of Indonesia that would enable UNTAET and Indonesia to exchange evidentiary documentation, interview and serve subpoenas on witnesses and, eventually, perhaps make arrests or extradite suspects.

Discussions with East Timorese non-governmental organizations

27. The UNTAET Human Rights Office organized a discussion with East Timorese NGOs relating to the justice and reconciliation aspects of the recommendations made by the

International Commission of Inquiry and the special procedures mechanisms of the Commission, those recommendations had been translated into Indonesian. Eight NGOs took part and the following views were expressed.

28. The participants discussed the policy of reconciliation. Reconciliation must be based on justice and the United Nations should not be seen as capitulating on the justice issue. Justice must precede reconciliation. It must be more than a top-down reconciliation; rather it must be from the bottom up and that can happen only if people who have committed crimes are brought to justice. Justice must be for both those in East Timor and those in Indonesia. Sanctions should not be too heavy for lesser offenders, but before forgiveness the perpetrators must be identified. It was stated that fair trials in East Timor would encourage people in West Timor to return. The United Nations was urged to persuade Indonesia to return the militia from West Timor for trial, but their safety would have to be guaranteed.

29. The NGOs expressed grave doubts that the Indonesian legal system could deal justly with those accused of violations in East Timor. Their past experience led them to doubt whether, even if the President and others were supportive, real justice could be achieved, and they felt that the interests of the East Timorese people should not be sacrificed.

30. The participants were unanimous and unequivocal that, given the magnitude of the devastation in East Timor, there must be an international tribunal, at least for the Indonesian perpetrators. The overwhelming message from the NGOs was that the United Nations should not abandon the notion of an international tribunal for East Timor, and that it would be a mistake to embrace too readily the Indonesian judicial process as a way of ensuring accountability for human rights violations in East Timor. The argument about exhausting domestic remedies offered little satisfaction.

31. On 16 February 2000, 14 human rights groups, women's NGOs and student organizations¹ addressed an open letter to the Secretary-General in which they underlined the importance of re-establishing normal community life in East Timor and of reconciliation with Indonesia based on justice and truth. That letter requested:

(a) The United Nations to establish an international tribunal to try the perpetrators of crimes against humanity committed in East Timor;

(b) UNTAET to establish a national tribunal in East Timor to try the Timorese accused of committing crimes against humanity in East Timor;

(c) UNTAET to take steps to protect the witnesses of the crimes, for the success of the tribunal;

¹ The following organizations signed the letter: FOKUPERS, ETWAVE, ASSOCIAÇÃO DOS EX-PRISONEIROS POLITICOS, COMISSÃO DOS DIREITOS HUMANOS DE TIMOR LESTE, YAYASAN HAK, HAK, IMPETTU, DSMPTD, OJLATIL, ETADep, OJETIL, LEMBAGA ADVOKASI BURUH, ASSOCIAÇÃO DOS JORNALISTAS, RENETIL.

(d) The United Nations to urge the Government of Indonesia to take steps to award compensation and rehabilitation to the victims of the violence;

(e) The United Nations urge the Government of Indonesia to stop intimidation and terror by pro-Indonesian militia against East Timorese refugees in the territory of Indonesia;

(f) The United Nations to ensure safe and secure repatriation of East Timorese refugees for the normalization of social life in East Timor and to facilitate the investigation of the crimes;

(g) The United Nations to encourage the Government of Indonesia to return immediately East Timorese prisoners of war from Indonesia;

(h) The United Nations to hold the Government of Indonesia responsible for the disappearances of East Timorese people during its occupation of East Timor;

(i) The United Nations to urge the Government of Indonesia to investigate thoroughly the hidden history of the Indonesian invasion and illegal occupation of East Timor for the sake of justice and the truth of history of both nations.

Question of a truth commission

32. In the aftermath of the reports of the two commissions of inquiry, some East Timorese have been discussing the prospect of a truth commission, recognizing that the legal process will be long and slow and that additional mechanisms, in addition to a court, may be needed for a full accounting of what happened.

33. The question of reconciliation remains a difficult one. East Timorese political leaders argue for tolerance and reconciliation, but many East Timorese are calling for punishment and retribution and vigilante attacks on suspected militia members and their families returning from West Timor have been common. The feeling among many in East Timor is that a decision on the value of establishing a truth commission may have to await a democratically elected government, but that it is important to expose East Timorese to how truth commissions have worked in different countries.

Information from the East Timor National Consultative Council

34. The Special Representative of the Secretary-General for East Timor and Chair of the National Consultative Council provided the following information on the views of the members of the Council and UNTAET in response to the High Commissioner's request. The East Timorese members of NCC appreciated the High Commissioner's desire for consultation and request for their input.

35. The National Council of Timorese Resistance (CNRT) is currently working out a position on justice and reconciliation, driven in part by a belief that only a carefully thought through reconciliation policy will succeed in encouraging the many East Timorese still in Indonesia to return home. On one level, this involves negotiations with the more moderate militia leaders, on

the understanding that there will be no immunity from prosecution for any serious crimes committed. On another level, it involves the establishment of a national reconciliation commission, with branches in every district of East Timor, to work out programmes for reintegration of returnees and accountability for less serious crimes that traditional justice mechanisms at a very local level may be able to handle.

36. Some CNRT members and some members of the NGO community remain concerned, despite assurances to the contrary, that justice will be sacrificed in the interest of reconciliation, and that some form of amnesty or pardon will eventually be worked out. UNTAET's position is clear: there can be no amnesties for international crimes.
